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No. 88-1160

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

C. F. CORNELIUS, PERSONAL REPRESENTATIVE,
ESTATE OF JOHN MCDONALD, Deceased,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Eighth Circuit

PETITIONERS' REPLY BRIEF

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REASONS FOR GRANTING THE PETITION

The initial (1984) provision granting relief from the strict manner in which the Internal Revenue Service had construed § 2032A, IRC became § 2032A(d)(3) which provides:

> (a) IN GENERAL. — § 2032A(d) (relating to election and agreement) is amended by adding at the end thereof the following new paragraph:
>
> "(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED. — The Secretary shall prescribe procedures which provide that in any case in which—

"(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

"(B) *substantially complies with the regulations prescribed* by the Secretary with respect to such election, but—

"(i) the notice of election, as filed, does not contain all required information, or

"(ii) *signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement* as filed, or the agreement does not contain all required information. (Emphasis supplied)

Tax Reform Act of 1986, Pub. L. No. 99-514, § 1421(a)-(b), 100 Stat. 2085, 2716 (1986) (1986 Amendment).

In its brief (p. 8) the government contends that the estate did not "substantially comply" because the names and signatures of the three heirs who were to succeed to the farmland as a result of the disclaimer were not on the recapture agreement. The government adds (p. 8) that this omission is crucial by referring to yet additional legislative history from the Staff of the Joint Committee on Taxation's comment that "some persons might intentionally neglect to comply unless they were discovered on examination." We have three comments to this argument.

First, the attorney who prepared the estate tax return complied with the precise language of the regulations (Treas. Reg. § 20.2032A-8(c)) by obtaining the signature of the decedent's only heir at the time of his death (January 15, 1981). That attorney apparently did not understand the doctrine of "relation back" occasioned by the subsequently filed disclaimer. Our point here is merely to demonstrate the highly technical nature of the subject under review and that the error was inadvertent and caused by the complexity of the juxtaposition of the law governing

special use value and disclaimers. There were not then nor are there now any regulations governing those intertwined subjects.

Second, well before the estate tax return was examined by the Internal Revenue Service an amended estate tax return containing the signatures of the three children to a recapture agreement was filed. Hence there can be no possible loss to the government since it had the written guarantee that recaptured taxes would be repaid in the event the farmland did not continue to qualify during the recapture period. This fact demonstrates that there is little if any difference between this case and *Prussner v. United States,* 87-2 U.S.T.C. (CCH) Par. 13,739 (C.D. Ill. Oct. 13, 1987), appeal pending, No. 88-1933 (7th Cir.) despite the government's attempt to distinguish it (Br. ft. p. 10).

Third, the relief statute quoted above permits an estate to remedy a defective election if it "substantially complies with the regulations." § 2032(A)(3)(B), IRC. That same subsection provides that the remedy is allowable if "signatures of one or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed."

This estate failed to obtain "signatures of one or more person"; the statute says we can remedy the defect if the election otherwise "substantially complies." The Internal Revenue Service does not complain of any other failure other than identifying these three heirs by their signature. How then can the estate fail to "substantially comply" when its only mistake was to omit signatures which the relief statute permits it to add? Yet, by ignoring the clear mandate of the statute and resorting to legislative history the lower courts found that the curative provisions did not apply.

It is this reliance upon legislative history that qualifies this case as an appropriate decision for review before this Court. Particularly we and the tax bar are concerned about the existing practice, noted by the writer over the past fifteen to twenty years, of a clear Congressional announcement in the form of a

statute becoming almost unrecognizable when the gloss of legislative history is introduced.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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